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Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

ORVILLE ONEY,
Petitioner,

v.

LEROY NENNIG JR,
Respondent.

On Petition For A Writ Of Certiorari
To The Court Of Appeals Of Wisconsin
For District II

PETITION FOR WRIT OF CERTIORARI

Orville L Oney
Petitioner, Pro-se

Orville L Oney
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41pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the Wisconsin Court of Appeals deprive me of my constitutional right under the Fourteenth Amendment to a fair and impartial ruling, thereby denying me a remedy for a injury or wrong pursuant to Article 1, Section 9, of the Wisconsin Constitution.

2. Was Detective Nennig acting in his official capacity when he committed perjury in applying for a search warrant for my home, which if he were not, would then preempt the requirement for a notice of circumstances prior to this civil action as per Wisc Stats § 893.80?

3. Does the discovery rule apply to this action since I initiated it within two years of discovering that NENNIG had committed perjury and fraud to obtain and serve the search warrant?

4. Does the six-year statute of limitations apply to this civil action since the actions of NENNIG were based on fraud, and the basis or gravamen of my complaint is the fraud committed against me and the ultimate invasion of my privacy--which would not have been possible without the fraud.

PARTIES TO THE PROCEEDING

All parties to this proceeding are identified in the caption. There are no parent or subsidiary companies to be listed.

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REFERENCE TO REPORTS OF OPINIONS

The official court decisions are included in the appendix:

1. The Wisconsin Supreme Court order, denying my petition for review. (1 page)

2. The Wisconsin Court of Appeal's decision, affirming the trial court's decision. (8 pages)

3. The trial court's decision, dismissing my complaint. (3 pages)

There are no official reports of the opinions or orders by the courts in this case.

HISTORY OF THE CASE

On July 23 1991, a search warrant was issued and executed for my house. Several items were seized, including items not listed on the search warrant, such as, money, wedding band, a hard cover book, a magazine, pictures of my daughter and possibly other items which I am yet unaware of.

On November 15 1991, I discovered that the search warrant had been based on fraud: specifically; misleading statements, untrue facts and improperly seized evidence, and the search warrant had been executed in violation of my rights to privacy and to be free from unreasonable search and seizure without probable cause. I also discovered that some items that had been seized were not listed on the return for the search warrant.

On November 21 1991, I wrote a letter to the Honorable Judge Stengel, asking the court to return my property because it had been improperly seized.

On January 17 1992, nearly six months after my property was seized, the Sheboygan County Sheriff's Department returned my property to me, however some of the items seized, were not returned.

On November 15 1993, I initiated a civil suit against NENNIG which was two years from the date I discovered that the search warrant had been improperly obtained.

On September 6 1994, Summary Judgment was entered in favor of the Respondent NENNIG, dismissing my complaint.

On September 7 1994, I submitted a motion for relief from judgment.

On September 12 1994, I resubmitted the motion for relief from judgment with corrections.

On September 12 1994, the Sheboygan County trial court issued an order denying my motion for relief from judgment.

On February 14 1995, I submitted my briefs to the Wisconsin Appeals Court to appeal the trial court's decision.

On October 4 1995, the Appeals court issued a decision affirming the trial court's decision.

On November 3 1995, I submitted my brief to the Wisconsin Supreme court for review of the appellate court's decision.

On February 15 1996, the Wisconsin Supreme Court denied my petition for review.

On May 15 1996, I mailed my original petition to the clerk of the United States Supreme Court.

On July 3 1996, the petition was returned to me for failure to comply with the Court's Rules of Procedure. The clerk indicated that I had 60 days to correct the errors and to resubmit the petition.

JURISDICTION

Jurisdiction is conferred upon this court pursuant to 28 USC § 1257(a).

The date of the entry of the order denying my petition for review is February 15 1996.

The Wisconsin Court of Appeals, with deliberate indifference to my rights, has unjustly and unfairly and erroneously ruled that Detective NENNIG did not commit fraud against me when he committed fraud and perjury to obtain and serve a search warrant for my home.

This decision is in conflict with other court's decisions on a federal level.

> Generally, "fraud" constitutes any artifice whereby he who practices it gains, ..., some undue advantage to himself, or to work some wrong or do injury to another, by means of a representation which he knows to be false or of an act which he knows to be against right or in violation of some positive duty.

US v Proctor & Gamble Co, 47 F Supp 676, 678. See also footnotes #6 and #7 on page 17 of this brief. See also Dabney v Levy, 191 F 2d 201, 204.

This fraud committed against me, and to me, has ultimately deprived me of my state and federal constitutional rights to be free from unreasonable search and seizure without probable cause and the deprivation of my property without due process,

pursuant to the Wisconsin Constitution, Article 1, Section 11, and the Fourth and the Fourteenth Amendments of the Constitution of the United States.

This petitioner is entitled to a decision that NENNIG committed fraud against me, and a decision should follow that the discovery rule applies to my civil action and also that the six-year statute of limitations should apply.

I have not presented a federal question, per se, to the state courts; but there appears to be a miscarriage of justice in the state courts, in that they fail to acknowledge that my constitutional rights have been abridged by an officer of the law, who has committed perjury and fraud to achieve that end. I have submitted proof of the fraud (letter from Sheriff's Department--a copy is in the appendix).

It appears that I am unable to obtain just relief in the state appellate court and I beg the U.S. Supreme Court to consider my petition on this case.

On July 3 1996, my original petition was returned to me for failure to comply with the Court's Rules of Procedure. The clerk indicated that I had 60 days to correct the errors and to resubmit the petition.

STATEMENT ON ARGUMENT

The Wisconsin Appeals Court's decision is in conflict with statutory and constitutional laws and with established court decisions. With documents that I had submitted with my appeal, I had shown that the respondent NENNIG committed perjury and fraud to obtain, serve and execute the search warrant for my premises. Wisc stats sec 946.31(1) and 946.32(1), prohibits this kind of conduct as do federal laws. Any acts that the officer would commit which are prohibited by law cannot be committed within his official capacity.

When NENNIG commits acts that are not in his official capacity, then a person is not required to submit a notice of circumstances prior to initiating a civil suit against him pursuant to Wisc stats sec 893.80.

When NENNIG committed fraud to take unfair advantage of me to invade my privacy in an unreasonable search and seizure then the six-year statute of limitations applies to my action pursuant to Wisc Statutes sec 893.93.

ARGUMENTS TO SUPPORT PETITION

1. DID THE WISCONSIN COURT OF APPEALS DEPRIVE ME OF A FAIR AND IMPARTIAL DECISION?

> Liberty is defined as:
> [F]reedom; the ability to enjoy all the rights granted by the United States and a particular state's constitution, as well as other rights such as the right to earn a living, the right to acquire knowledge, the right to marry, etc; refers to the fullest scope of freedoms one has ... .

Barron's Law Dictionary, 3rd edition.

Pursuant to Wisconsin Constitution, Article 1, Section 9, I have a right to a remedy for the wrong committed against me by NENNIG.

Pursuant to the 14th Amendment to the Constitution to the United States, no state shall deprive a person of his liberty, specifically, my freedom to pursue a remedy for the wrong committed against me.

The trial court and the appeals court have abused their discretion in denying me a fair and impartial decision based on the facts presented to them.

2. ACTIONS OUTSIDE OFFICIAL CAPACITY

To be acting in one's official capacity "he must be acting as a peace officer, that is, he must be doing 'police work' and he must be acting with the powers vested in him as a peace officer." (State v Barrett, 96 Wis 2d 174, 180-181, 291 NW2d 498, 500).

No one has the vested power to commit perjury and fraud to take unfair advantage of another, including peace officers. The acts performed by NENNIG must have "some relation to his employment." (Id at 181). Breaking the law to search someone's house to satisfy his curiosity cannot be one of the vested powers of a peace officer nor can it have any relation to his job duty.

On page 5a, the appeals court relied on the citation in State V Barrett, 96 Wis 2d 174, 180, 291 NW2d 498, 500, to aid in the decision that NENNIG was acting in his official capacity "(the performance of official duties is simply acting within the scope of what the agent is employed to do)." However the paragraph continues by stating that: "The test is whether the agent is acting within that compass or is engaging in a personal frolic of his own." Id at 180

Would it be within his official capacity when an affiant makes false or inaccurate statements:

(1) when the affiant unknowingly makes false or inaccurate, statements then he

would be within his official capacity because he could not be held culpable for something he is unaware of. But (2) when the affiant knowingly makes false statements, he is knowingly breaking the law and hence on a frolic of his own, therefore he would not be acting within his official capacity.

In both cases the search warrant would be invalid, but each case affects the officer's official capacity differently; because under case (2) above the officer is not employed to commit perjury and fraud.

The previously stated citation that the court relied upon is true but it does not imply that NENNIG was in his official capacity. It depends upon the culpability of the officer. Perjury and fraud are not within the scope of what NENNIG is employed to do and are not official acts within his job description.

On pages 4a & 5a, beginning with the last paragraph on page 4a of the court's decision, it states that NENNIG was acting in his official capacity because he stated in the affidavit in support of the search warrant "that it is made by Nennig pursuant to his duties as a sheriff detective." The court is in error, because making the statement does not necessarily put the action in the officer's official capacity. His method of obtaining the search warrant must bear "some relation to his employment ... and

he must be acting with the powers vested in him as a peace officer." State v Barret, 96 Wis 2d at 181. Perjury and fraud would bear no relation to his employment nor can he be vested with any powers to commit perjury and fraud. Therefore, although he is employed to apply for and execute search warrants, he is not employed to commit perjury and fraud to apply for, obtain, serve and execute them. Breaking the law to perform his job duties takes the actions outside of his official capacity.

The court on page 5a, also states that "actions taken without lawful authority may still be within an officer's official capacity." This is not always true, it would depend upon the culpability of the officer, as previously argued. NENNIG's official duty is to execute valid search warrants, he is not employed to knowingly execute invalid search warrants, especially ones which he has obtained through perjury and false swearing. To knowingly obtain a search warrant through false swearing and to knowingly execute it with the knowledge that it was obtained by false swearing would constitute fraud; these actions would not be within the officer's duties or his official capacity.

A peace officer is not necessarily acting within his official capacity when he is engaging in police activity or in pursuit of his duties, he must also be acting within his scope of employment and

scope of the law. See notes 4 & 5 to State v Barrett 96 Wis 2d at 174-175, 291 NW2d 498. Without a valid search warrant he had no authority to search my home and no duty to act. Acting without authority would not be in his official capacity. Hence NENNIG was not within his official capacity when he searched my home and seized my property.

3. DISCOVERY OF FRAUD AND PERJURY

I did not discover that fraud was involved in obtaining the search warrant until on or after November 15 1991, when I saw a copy of the affidavit in support of the search warrant. Until that date I did not realize that I had been injured.

If a person's premises is searched legally, then he would not be injured and would not have a cause of action. If a person's premises is searched illegally then he would have a cause of action when he discovers that it was done illegally. If that person believes that the search was done legally and takes no action to find out if it was done illegally because he believes the search was legal, does that non-action take away his right to remedy when he discovers that it was in fact not legal? On page 7a, the court cites Groom v Professionals Ins. Co., 179 Wis2d 241, 247-48, as the source for determining "when the plaintiff knows to a reasonable probability, or in the exercise

of reasonable diligence should have known, the fact of injury and the person who caused the injury." However, if a person is unaware that he has been injured because he believed the action to be legal, how could he be expected to try to discover the unknown injury and it's cause? First a person has to realize or suspect that he has been injured. Without knowing that I had been injured, I had no reason to seek to discover the existence of the affidavit to the search warrant and to obtain a copy of it.

I was unaware that I was injured and therefore did not pursue any action to uncover my injury. My time began to toll for the purposes of this action when I discovered that I had been injured by the perjury and fraud committed by NENNIG.

On page 7a, the court cites Hennekens v Hoerl, 160 Wis 2d 144, 161, 465 NW 2d 812, ___, indicating that it is a question of law whether a plaintiff exercised reasonable diligence. I had no facts in my possession to alert me to the fact that I had been injured nor that the search warrant had been obtained by fraud nor that I was served with an invalid search warrant.[1]

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[1] Standard for determining when fraud should have been discovered is objective determination of whether there exists sufficient facts to put reasonable person on inquiry notice of possible fraud.

On page 7a the court argues that I should have realized that I had been injured simply because my house had been searched. If the peace officers would have served me with a search warrant without the events previously that day, it would have alerted me to an injury. But because of my acquaintance with Mr Ramaker and my presence during the search of his house, I had believed that the Sheriff's Department had been able to get a search warrant for my premises on those grounds. I had thought that the search warrant was valid.

Under Wisconsin Statutes, a person has two years from the discovery of an intentional tort to initiate a civil action against the tortfeasor. It was on or after November 15 1991, that I discovered that I had been injured by NENNIG using manufactured evidence to obtain the search warrant for my house and I initiated my action within two years of that date.

4. FRAUD IS GRAVAMEN OF COMPLAINT

On page 6a, the court indicated that it believed that this is not an action based on fraud because the false statements were

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Majeski v Balcor Entertainment Co Ltd, 786 F Supp 1458, vacated Eckstein v Balcor Film Investors, 8 F 3d 1121, certiorari denied, 114 S Ct 883, 127 L Ed 2d 78.

not made directly to me[2] and that I did not rely on them.[3] However, Nennig served me with an invalid search warrant which he led me to believe was valid. He knew or should have known that it was not valid because he had obtained it by false swearing, perjury and fraud. I relied upon the belief that it was a valid search warrant when I opened my door so that he could execute it.

On page 6a, the court cited Peters v Kell, 12 Wis 2d 32, 41-42, 106 NW2d 407, 413-14 as the influence for its decision;

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[2] "Fraud" consists of unlawful conduct that operates prejudicially upon the rights of others. To defraud is to withhold from another that which is justly due him, or to deprive him of a right by deception or artifice. ... It consists of conduct that operates prejudicially on the rights of others. Krause v. Krause, 151 N.W. 991, 994, 30 N.D. 54.
Words and Phrases, (1958) vol 17A, p.76.

[3] "Fraud" is a generic term, which embraces all the multifarious means which human ingenuity can devise, and is resorted to by one individual to get an advantage over another by false suggestions or by the suppression of the truth. No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling, and any unfair way by which another is deceived. [Numerous citations omitted]. See Words and Phrases, (1958), vol 17A, pps 106-107

on page 42 of the citation, in the last paragraph, it states that "a false representation must be relied and acted upon in order to be actionable." I relied upon the validity of the search warrant and I opened my door in response to my belief that it was valid. Had I known that it was not valid then I would not have opened my door to NENNIG.[4]

Because of my belief that the search warrant had been valid, I did not think of pursuing any action against NENNIG. I was totally unaware that I had been a victim of fraud.[5] I did not think that a peace officer would manufacture evidence and commit perjury and fraud to obtain a search warrant.

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[4] Generally, "fraud" constitutes any artifice whereby he who practices it gains, or attempts to gain, some undue advantage to himself, or to work some wrong or do injury to another, by means of a representation which he knows to be false or of an act which he knows to be against right or in violation of some positive duty. U.S. v. Proctor & Gamble Co., 47 F.Supp 676, 678
Words and Phrases (1958) vol 17A, p.136

[5] The term [fraud,] includes an advantage gained by false statements of the law made by one who knows what the law is, over one who is ignorant of the law and relies upon the other party's statements. Lehman v. Shackleford, 50 Als. 437, 439.
Words and Phrases, (1958), vol 17A, p.89

In addition, I was unaware that there was a readable copy of an affidavit to a search warrant. I had assumed that it was done orally to the Judge. However, I did not think to attempt to find out any different because of my belief that the search warrant had been valid. I was not in the possession of any facts that fraud had been used to obtain the search warrant which would cause me to draw any inferences that I had been injured. It is an error for the appeals court to state that I did not exercise reasonable diligence to discover the fraud when it was because of my belief that a peace officer would not commit perjury to take unfair advantage of me, and that I did not suspect that I was a victim of fraud because I assumed that the search warrant was valid.

My main concern was to get a receipt for the property taken or the return of it or at the least the return of my money. That was my concern in seeing an attorney. Because I did not make any indication to the attorneys that I wanted to pursue any action against the officers, they did not mention any documents that I should obtain -- in particular the affidavit in support of the search warrant. Neither attorney was able to help me in any appreciable way and I did not enlist either of their services.

Although my complaint is based on invasion of privacy, the gravamen (or the

gist) of the complaint is based on fraud.[6] Without fraud there would not have been an invasion of privacy. Also, if the search had been without fraud, therefore legal, I would have no grounds for this action. Because of the fraud involved in the invasion of my privacy,[7] I am entitled to restitution for my injury based on the six-year statute of limitations for fraud, pursuant to Wisc Stats sec 893.93(1)(b).

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[6] To constitute "fraud," a representation must be in regard to a material fact, must be false and must be acted on by the other party in ignorance of its falsity and with reasonable belief that it is true and the representation must be the ground on which the transaction took place. Whitsel v. Hoover, Tex.Civ.App., 120 S.W.2d 930, 934. Words & Phrases, (1958) vol 17A, p.92

[7] To constitute "fraud," in addition to a misrepresentation of material facts, it must appear that complaining party was induced to act upon misrepresentation in ignorance of its falsity and that party charged had knowledge that representation was false. U.S. v. Cold Metal Process Co., D.C.Ohio, 62 F.Supp. 127, 140. Words and Phrases, (1958) vol 17A, p.93

CONCLUSION

Actions which a public official performs while on duty that are not in the scope or course of his employment would not necessarily be within his official capacity but especially not if it is forbidden by law. When NENNIG committed perjury and fraud, he was acting outside his official capacity.

When NENNIG served me with the invalid search warrant which he had obtained through perjury and fraud, he was committing fraud directly on me by representing the search warrant as being valid to me and I relied on that fact when I opened the door to my house to him so he could execute the search warrant.

Serving me with a search warrant which I presume to be valid does not alert me to an injury nor the fact that it was acquired by perjury and fraud. If a person believes that the search of his house is valid, he cannot be expected to think that he was injured. A valid search warrant does not injure a person. A person is not closing his eyes to information when he is unaware of the information and he would believe that he would have no need for the information even if he was aware of it?

WHEREAS, I beg this court to issue a writ of certiorari to review the decision of the Wisconsin Court of Appeals, based on the facts: (1) that NENNIG was not acting in his official capacity when he obtained the search warrant for my house by committing fraud and perjury and therefore a notice of circumstances was not required before commencing this action, (2) the discovery rule applies to this action, because I was not aware of the fraud committed on me when I was served with the invalid search warrant and (3) that the gravamen of the complaint is based on fraud, because otherwise the search would not have occurred, therefore the six-year statute of limitations is applicable.

Date: July 31 1996

Orville Oney

Petitioner - Pro-se

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APPENDIX

WISCONSIN SUPREME COURT ORDER . . 1a

WIS COURT OF APPEAL'S DECISION . . 2a

THE TRIAL COURT'S DECISION . . . 9a

LETTER FROM SHERIFF'S DEPARTMENT . 12a

UNITED STATES CONSTITUTION
14th Amendment 13a

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SELECTED SECTIONS OF THE
WISCONSIN CONSTITUTION 15a

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To: February 15, 1996
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You are hereby notified that the Court has entered the following order:

No.94-2860 Oney v. Nennig L.C.#93CV0895

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of plaintiff-appellant-petitioner, Orville Oney, and considered by the court,

IT IS ORDERED that the petition for review is denied, without costs.

Marilyn L. Graves
Clerk of Supreme Court

COURT OF APPEALS
DECISION
DATED AND RELEASED
OCTOBER 4, 1995

No. 94-2860

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT II

ORVILLE ONEY,

Plaintiff-Appellant,

v.

LEROY NENNIG, JR.,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Sheboygan County: GARY LANGHOFF, Judge. **Affirmed.**

Before Brown, Nettesheim and Snyder, JJ.

PER CURIAM. Orville Oney appeals from a summary judgment dismissing his action against Leroy Nennig, Jr., a Sheboygan County sheriff's detective. The circuit court dismissed the action because Oney failed to comply with the notice of claim statute, § 893.80, STATS., and the action was barred by the two-year intentional

tort of limitations, §893.57, STATS. We conclude that this was correct and affirm the judgment.

On July 23 1991, Nennig, along with another Sheboygan County Sheriff's detective and a probation officer, searched Oney's house pursuant to a search warrant. Various items were seized during the search. However, no criminal charges were filed and the items were returned to Oney.

This action was commenced November 15, 1993. Oney alleged that Nennig, in conspiracy with others, fabricated statements in order to obtain the search warrant. He sought to recover for the fraud committed in obtaining the search warrant and the resulting invasion of privacy. He alleged that some items seized--a book, a magazine, a newspaper clipping, money and pictures of his daughter--were never returned to him. Nennig's answer raised as an affirmative defense Oney's failure to file a notice of claim and the statute of limitations.

When called upon to review a trial court's grant of summary judgment, we follow the same methodology as the trial court. Stann v. Waukesha County, 161 Wis. 2d 808, 814, 468 N.W.2d 775, 778 (Ct. App. 1991) Summary judgment methodology is set forth in § 802.08(2), Stats. Id. We review a summary judgment determination de novo, independent of the trial court's decision. Id. We examine the record to determine whether any genuine issues of

material fact exist and whether the moving party is entitled to judgment as a matter of law. Id. at 815, 468 N.W.2d at 778.

Section 893.80(1), STATS., provides that no action may be brought against a governmental officer unless within 120 days after the event giving rise to the claim, written notice of the circumstances of the claim is served upon the governmental agency. If compliance with this section is challenged, the plaintiff has the burden of proof to show that a notice of circumstances was given or that there was actual notice on the part of the governmental agency and no prejudice from the lack of notice. Majerus v. Milwaukee County, 39 Wis.2d 311, 317, 159 N.W.2d 86, 89 (1968)

Oney concedes that he did not timely file a notice of circumstances. He argues that § 893.80(1), STATS., does not apply to his claim because in making false statements Nennig was acting outside his official capacity and had been sued personally for his acts. Oney's argument rests on the premise that the search warrant was invalid and Nennig therefore acted without lawful authority.

The record here establishes that Nennig was acting in his official capacity in applying for and executing the search warrant. The affidavit in support of the search warrant recites that it is made by Nennig pursuant to his duties as a sheriff detective. Making such affidavits, even

if they contain false or inaccurate information, and executing search warrants are what sheriff detectives are employed to do. Thus, Nennig acted in his official capacity. See State v. Barret, 96 Wis.2d 174, 180, 291 N.W.2d 498, 500 (1980) (the performance of official duties is simply acting within the scope of what the agent is employed to do). Moreover, actions taken without lawful authority may still be within an officer's official capacity. Id. at 181, 291 N.W.2d at 501. Even if the search warrant had been determined to be invalid, Nennig still acted within his official capacity in executing it.[1]

Oney failed to file a notice of circumstances within 120 days of the search of his home. His action is bared for his failure to comply with a condition

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[1] Oney's reliance on the holding in Harmann v. Schulke, 146 Wis.2d 848, 852, 432 N.W.2d 671, 673 (Ct. App. 1988), that a governmental officer does not enjoy immunity if his or her conduct is malicious, willful and intentional, is misplaced. That holding concerns immunity for acts done within an officer's official capacity and does not hold that willful or intentional acts are outside the scope of official capacity. We do not reach immunity here because the failure to file a notice of circumstances bars this action.

precedent to maintaining the action.[2] See Gonzalez v. Teskey, 160 Wis.2d 1, 10, 465 N.W.2d 525, 529 (Ct. App. 1990).

Oney's action is also barred by the statute of limitations. Section 893.57, STATS., provides that an action to recover damages for libel, slander, invasion of privacy or other intentional tort shall be commenced within two years after the cause of action accrues or be barred. Oney argues that the six-year statute of limitations is applicable to his action since it is one based on fraud, that is, fraud to obtain the search warrant. This was not an action for fraud because the allegedly false statements were not made directly to Oney and he did not rely on them. See Peters v. Kell, 12 Wis.2d 32, 41-42, 106 N.W.2d 407, 413-14 (1960).

Oney's complaint states a cause of action for the invasion of privacy. Oney's action was filed on November 15, 1993, and not commenced within two years

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[2] Nennig addresses Oney's claims that the county had actual notice of the circumstances and that the statute should not be applied to him because he only learned of its existence shortly before commencing his lawsuit. While Oney made those arguments in the circuit court, he did not raise them on appeal. The correctness of the circuit court's ruling on those issues is confessed. See Schlieper v. DNR, 188 Wis.2d 318, 322, 525 N.W.2d 99, 101 (Ct. App. 1994).

of July 21, 1991.

Oney also argues that the discovery rule should apply in determining when the cause of action accrued. He claims he did not learn of the falsity of the statements in the affidavit in support of the search warrant until he was provided a copy on November 15, 1991, or thereafter.

Under the discovery rule, the cause of action accrues when the plaintiff knows to a reasonable probability, or in the exercise of reasonable diligence should have known, the fact of injury and the person who caused the injury. Groom v. Professionals Ins. Co., 179 Wis.2d 241, 247-48, 507 N.W.2d 121, 124 (Ct. App. 1993). Where, as here, the material facts and reasonable inferences to be drawn from the facts are undisputed, whether a plaintiff exercised reasonable diligence is a question of law. Hennekens v. Hoerl, 160 Wis.2d 144, 161, 465 N.W.2d 812, 819 (1991)

Oney was served with the search warrant when his house was searched on July 23, 1991. At that time he was in a position to know that he was injured. It appears that he consulted with two attorneys the next day and undertook efforts to obtain the return of his property. July 23, 1991 was the day of discovering the injury.

Further, the affidavit in support of the search warrant was a public record which Oney could have earlier obtained and discovered the alleged falsehoods.

"Plaintiffs may not close their eyes to means of information reasonably accessible to them and must in good faith apply their attention to those particulars which may be inferred to be within their reach." Groom, 179 Wis.2d at 251, 507 N.W.2d at 125 (quoting Spitler v. Dean, 148 Wis.2d 630, 638, 436 N.W.2d 308, 311 (1989)). Oney's claim that he did not know that he could obtain a copy of the affidavit and that the attorneys he consulted did not mention that possibility does not relieve him of the duty to file his action within two years of July 23, 1991. The law does not have a different set of standards applicable to those who proceed pro se and claim ignorance of the law.

By the Court.--Judgment affirmed.

STATE OF WISCONSIN	CIRCUIT COURT BRANCH III	SHEBOYGAN COUNTY

ORVILLE ONEY, Intentional Tort - 30106
Plaintiff
SUMMARY JUDGMENT
-vs- Case No. 93 CV 895
LEROY NENNIG, JR.,
Defendant.

This matter having come before the court, The Honorable Gary Langhoff presiding, on cross-motions for summary judgment, on August 22, 1994, and the plaintiff, ORVILLE ONEY, appearing in person, pro se, and the Defendant, LEROY NENNIG, JR., appearing by his attorney, CARL K. BUESING, and the court having heard the oral arguments of the parties and having considered the Briefs and Affidavits and other proofs submitted by the parties,

NOW, THEREFORE, IT IS THE FINDING OF FACT AND CONCLUSIONS OF LAW of the Court as follows:

1. The standard for granting summary judgment is recited at Wis. Stats. §802.08(2).

2. The evidence to be considered in determining whether summary should be granted is controlled by Wis. Stats. §802.08(3).

3. In reviewing the Affidavits submitted by the Plaintiff, the court finds that they contain inadmissible hearsay, and assertions and conclusions

not supported by facts.

4. That looking at the evidence in the light most favorable to the Defendant, the Court cannot conclude that there are no genuine issues of fact; and accordingly, Plaintiff is not entitled to summary judgment.

5. Looking at the Affidavits and other proofs of the Defendant in support of his Motion for Summary Judgment the Court finds and concludes that Det. NENNIG was acting in his official capacity at the time of the alleged tort and therefore Wis. Stats. §983.80 requires that the Plaintiff give a notice of circumstances of claim.

6. The Affidavits and other proofs further demonstrate that Plaintiff failed to adhere or comply with Wis. Stats. §893. 80(1) in that Plaintiff failed to give notice to Sheboygan County.

7. The Affidavits and other proofs further demonstrate that the Plaintiff failed to commence his lawsuit within two (2) years of the alleged tort as required by Wis. Stats. §893.57.

8. There are no affidavits or other proofs submitted to the Court which demonstrate that the Plaintiff is entitled to relief from the notice of circumstances requirements and Statute of Limitations based on the discovery rule.

9. Defendant is entitled to summary judgment against Plaintiff.

NOW, THEREFORE, IT IS THE ORDER OF THE COURT:

1. That the Motion for Summary Judgment by Plaintiff against Defendant is denied.

2. that pursuant to Wis. Stats. §802.08(2) Summary Judgment is granted to the Defendant, LEROY NENNIG, JR. against Plaintiff, ORVILLE ONEY, dismissing Plaintiff's Complaint against Defendant, together with costs in the amount of Two Hundred Nighty-five and 90/100ths ($295.90) Dollars.

Dated this 6th day of September, 1994

BY THE COURT:
/S/ Gary Langhoff
GARY LANGHOFF
Circuit Judge,
Branch III

OFFICE OF THE SHERIFF
615 NORTH 6TH STREET
SHEBOYGAN WI 53081
PHONE 414-459-3111
FAX 414-459-4305
August 17, 1994

Mr. Orville L. Oney
N7102 CTH C
Plymouth WI 53073

Dear Sir,

You have specifically requested a copy of a Waiver of Rights form signed by Arnold Ramaker on July 23, 1991, as part of an investigation numbered 37704. Arnold Ramaker was not interviewed on July 23, 1991 as part of that investigation and therefore no waiver of Rights form was executed by him on that date precluding me from providing a copy.

Sincerely,
/s/ James E. Hoffmann
James E. Hoffmann
Deputy Inspector
Criminal Investigation

JEH/no

UNITED STATES CONSTITUTION

14th Amendment, section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; not deny to any person within its jurisdiction the equal protection of the laws.

WISCONSIN STATE STATUTES

Wis Stats § 893.80: Claims against governmental bodies or officers; notice of injury; limitation of damages and suits. (1) ..., no action may be brought or maintained against any volunteer fire company organized under ch.213, political corporation, governmental subdivision or agency thereof nor against any officer, official, agent or employe of the corporation, subdivision or agency for acts done in their official capacity or in the course of their agency or employment upon a claim or cause of action unless;

(a) Within 120 days after the happening of the event giving rise to the claim, written notice of the circumstances of the

claim signed by the party, agent or attorney is served on the volunteer fire company, political corporation, governmental subdivision or agency and on the officer, official, agent or employe under s. 801.11. ... [Emphasis added]

Wisc Stats § 893.93 Miscellaneous actions. (1) the following actions shall be commenced within 6 years after the cause of action accrues or be barred:

(a) ...

(b) An action for relief on the ground of fraud. The cause of action in such case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud.

Wisc Stats § 946.31 Perjury.
(1) Whoever under oath or affirmation orally makes a false material statement which the person does not believe to be true, in any matter, cause, action or proceeding, before any of the following, whether legally constituted or exercising powers as if legally constituted, is guilty of a Class D Felony: ...; ...;

(c) A judge, referee or court commissioner;

Wisc Stats § 946.32(1) False Swearing. Whoever does either of the following is guilty of a Class D Felony:

(a) Under oath or affirmation makes or subscribes a false statement which he does

not believe is true, when such oath or affirmation is authorized or required by law or is required by any public officer or governmental agency as a prerequisite to such officer or agency taking some official action.

WISCONSIN CONSTITUTION

Article 1, Section 9. Remedy for Wrongs. Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

Article 1, Section 11. Searches and Seizures. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.